

**IN THE DISTRICT COURT HELD ON WEDNESDAY THE 29<sup>TH</sup> DAY  
OF NOVEMBER, 2023 BEFORE HER WORSHIP VICTORIA VERA  
AKONU DISTRICT MAGISTRATE**

---

**SUIT NO: A1/15/19**

**LYDIA ADU**

Of Ankra-Muano suing on her  
Behalf and on behalf of her  
Siblings

**PLAINTIFF**

VRS.

**1. AFUA BRONYA**

**2. ALEX AGYAPONG a.k.a KWASI YILEH**

Both of Ankra-Muano

**DEFENDANTS**

---

**PARTIES:** Plaintiff present

Defendants represented by Gyebi Emmanuel

---

---

**J U D G M E N T**

---

---

The writ of summons initiating this action which was filed on 2<sup>nd</sup> November, 2018 is endorsed with the Plaintiff's reliefs as follows:

- (1) "Declaration of title, ownership and recovery of possession of a cocoa farm situate, lying and being at Ankra-Muano a place known and called "Nidwafra" and bounded by the landed properties of Afua Akyea, Adwoa Neenko, Nana Yaw Brefie, Nana Yaw Adjei and Op. Kwadwo Asaase which said cocoa farm Defendants are claiming ownership,

- (2) An order of the honorable Court to compel the Defendants to render an account for the cocoa beans they forcible collected from the Plaintiff's father's cocoa farm, and
- (3) Perpetual injunction restraining the Defendants jointly and severally whether by themselves, family members, privies, assigns, labourers, caretakers, workers, etc., from having anything to do with the disputed cocoa farm after the final determination of the suit".

The Defendants subsequently engaged the services of lawyer who filed notice of appointment of solicitor on 12<sup>th</sup> November, 2018 and The 2<sup>nd</sup> Defendant pleaded not liable to all the Plaintiff's claims on 28<sup>th</sup> November, 2018 as the 1<sup>st</sup> Defendant was indisposed at the time. Trial however commenced on 16<sup>th</sup> January, 2019.

Record of proceedings was adopted on 15<sup>th</sup> February, 2023 and the matter adjourned for continuation.

Subsequently on 16<sup>th</sup> May, 2023 the 2<sup>nd</sup> Defendant's name was amended to read as Alex Agyampong a.k.a Kwasi Yileh. Counsel for the Defendants, then closed the case of the Defendants.

### **THE CASE OF THE PLAINTIFF**

The case of the Plaintiff is that the disputed farmland which was a forest, was gifted to her father by her grandfather because her grandfather could not assist her father financially to secure a job after he completed Middle School form 4.

She avers that ever since the land was given to her father, he cultivated same until his demise few years ago. Even as a child she saw him cultivating the

land and mentioned her great grandmother, Yaa Kosi, Kwabena Gyamfi to be present when the grandfather gifted the disputed farmland to her father.

It is her evidence that her father initially cultivated Tetteh Quarshie type of cocoa on the disputed farmland even though she was not born at the time but she grew up to see that type of cocoa until that was cut down and then replanted the agric type of cocoa.

She states further that her father before his demise gifted the disputed farmland to her and her siblings and that they have been in possession of the farm until the Defendants started laying claim to same despite resisting them. The Defendants went to the farm and harvested the cocoa to the detriment to her and her siblings hence this action.

### **Evidence of PW1**

The evidence of the PW1 is that she is a sister to the Plaintiff and that her grandfather Agya Ntaa gifted the disputed land to her father Kwabena Adu who cultivated cocoa on it for his livelihood until the cocoa withered.

She avers that when Kwabena Adu was about to die he told the Plaintiff and her maternal siblings that he has gifted the disputed farm to them. They in turn provided a crate of soft drinks and a crate of eggs as “aseda” to him and Kwabena Adu’s nephew whom he wanted him to succeed him took him to the farm and Kwabena Adu showed him the farm which he has gifted to his children.

She avers further that the disputed land shares common boundary with Op. Kwasi, Adwoa Nerako and Nana Yaw Brefi, Maame Achiaa and Op. Yaw Adjei.

## **THE CASE OF THE DEFENDANT**

The 2<sup>nd</sup> Defendant testified on behalf of the Defendants.

It is the evidence of the Defendants that their grandmother Adwoa Kaah whose mother was known as Adwoa Kyea (Achiaa) married one Kwabena Korkoreh and they cultivated this land for a while it was a forest land.

It is their case after the death of Kwabena Korkoreh a dispute arose over the forest land. After that dispute, Adwoa Achiaa shared the land among her children of which Adwoa Kaah was one of them, before she also died and each of the said children cultivated their respective lands. Adwoa Kaah was at the time living in her matrimonial home in Bibiani and so she left her land unattended to.

He avers that Papa Ntaa who succeeded the uncle of Adwoa Kaah's met the family and proposed to cultivate the farmland belonging to Adwoa Kaah and share the produce with her but she refused. Eventually she agreed to the proposal upon being impressed upon by the family and so the farmland was given to the said Papa Ntaa who cultivated cocoa on the land till the cocoa withered. Papa Ntaa also took another land from Adwoa Kaah which he used to cultivate palm plantation

According to him, there was a dispute between Adwoa Kaah and Adu Kwabena as the later failed to share the palm plantation with Adwoa Kaah and during the settlement, the palm plantation was shared between them and in respect of the cocoa farm, it was agreed that Adu Kwabena will give Adwoa Kaah two (2) bags of dried cocoa on yearly basis but Adu Kwabena flouted this agreement and so Adwoa Kaah wanted to sue but she died. Her

family then decided that since Adu Kwabena was advanced in age, they allowed him to be on the land until the time that he will die then her children will take their mother's land.

He avers that when Adu Kwabena died, the family of Adwoa Kaah informed his children that they were taking the cocoa farm. It was then that the family was informed that Adu Kwabena had given the disputed farmland to his children. The family informed the Plaintiff that the disputed farmland did not belong to her father and for that matter he could not have given her the land and so when the Plaintiff harvested the cocoa, her conduct was reported to the Sanaahene who invited and told the Plaintiff that the farmland did not belong to her father and so she should leave the farm for the 1<sup>st</sup> Defendant as she is the successor to Adwoa Kaah.

He avers further that, the following year he also went to harvest the rip cocoa and that is why the Plaintiff has instituted this action. He states that about a month ago (at the time he testified on 19<sup>th</sup> July, 2019) that the farm had been cut down by the Agric Extension officers as the farm had been infected and new cocoa replanted and so the Plaintiff nominated someone who will receive any proceeds that will arise from the said exercise until the final determination of this suit.

## **EVIDENCE OF DW1**

The evidence of DW1 that he is a grandson of Adwoa Kaah. He knows the parties herein and that sometime in the year 1947 one Kwabena Adu Twum died and his sister called Abena Bempomaa wanted to take the farm Kwabena Adu Twum had cultivated with his wife Adwoa Akyea (Achiaa).

Adwoa Akyea (Achiaa) then sued and the matter was prolonged from 1947 to 1957 and eventually ended at the Sekondi High Court. He tendered in evidence the record of proceedings in that case which was admitted and marked as Exhibit 1 and exhibit 2, which according to him that agreement included the disputed farm.

He states that Kwabena Atta did not cultivate the disputed farm as Kwabena Atta had a land which he was cultivating and after his demise, that land is in possession of his children including the Plaintiff. That the father of the Plaintiff sought permission from his grandmother to cultivate on her land for his sustenance and that the Plaintiff's father did not give Adwoa Kaah's portion of the produce to her and so she summoned the Plaintiff's father at the chief's palace.

According to his evidence, the Plaintiff's father pleaded and it was agreed that going forward he will give Adwoa Kaah's portion to her. He also cultivated into palm plantation the land of Adwoa Kaah which farm was shared between them.

He avers that about 3 years ago (at the time of his testimony on 20<sup>th</sup> August, 2019) the said Kwabena Adu died and the 2<sup>nd</sup> Defendant went to plant plantain suckers in place of the withered cocoa trees but the PW1 uprooted all the plantain suckers and so the matter ended at the chief's palace where the panel made it known to the Plaintiff that the disputed land did not belong to her father and for that matter she should not go on to the land again.

## **EVIDENCE OF DW2**

His evidence is that he is the linguist of the Sanahene of the paramoun of Anhwiaso Traditional Area. He corroborated the evidence of the 2<sup>nd</sup> Defendant and DW1.

### **APPLICABLE LAW/BURDEN OF PROOF**

A party seeking for and counterclaiming for declaration of title to land, recovery of possession and perpetual injunctions, has a burden of identifying the boundaries of the land in dispute, his/her root of title, show isolated acts of ownership to indicate he or she has been in peaceful possession without any hindrance from anybody. He must also discharge that burden of persuasion on him/her that he/she is entitled to his/her claim without necessarily relying on the weakness in the opponent's case and when this burden is discharged, a declaration will be made in his or her favour.

The Plaintiff, by law has a burden to prove his case to the standard required in civil actions, that is on a balance of probabilities and in land matters proof by the preponderance of probabilities as stated in Sections 10, 11, 12 and 14 Evidence Act, 1975 (NRCD 323).

Therefore, the Plaintiff must lead credible and reliable evidence as was retreated in the case **AGYENIM BOATENG & 28 ORS. VRS. S. K. BOATENG [2009] 5 G.M.J. 58** where it was held:

**“the law has always been that a person who makes averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible**

**evidence from which the fact or facts he asserts can properly and safely be inferred.... Thus, where corroborative evidence must exist, the Court expects a party who makes an averment (which the other side denies) to call such corroborative evidence in support of his own”**

Having denied the case of the Plaintiff, the only duty of the Defendants is to lead evidence to discredit the Plaintiff’s so that her case will be dismissed.

The issues for determination are:

- 1. Whether or not the disputed farmland belonged to the Plaintiff’s late father?**
- 2. Whether or not the disputed farmland had been gifted to the Plaintiff and her siblings?**

In resolving the first issue, I will have to examine the root of title of the Plaintiff.

The Plaintiff traces her root of title to the disputed farmland through her late father who according to her, was given the disputed farmland by his father. Her father was called Adu Kwabena and great grandfather was also known as Atta. It is the evidence of the Plaintiff that the farm that was given to her father was forest land and it was her father who cultivated cocoa on the disputed farmland. Her grandfather gave her father forest land because her grandfather could not assist her father financially to secure job after he completed form 4.

She avers that her father also gifted the farmland to her and her maternal siblings before he died and even after the death of her father they were in possession until the Defendant recently started laying claims to same.



The Defendants have denied that the disputed farm land belonged to the Plaintiff's father and for that matter the Plaintiff's father could not have gifted same to her and her siblings and for that matter the burden is on the Plaintiff to prove her assertion.

And this burden is not discharged merely by mounting the witness box to repeat her assertions on oath, she does it by producing credible and reliable evidence. – see the case of MAJOLAGBE VRS. LARBI [1959] GLR 190 @ 192 where it was held as follows:

**“proof, in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g by producing documents, description of things, references to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true”**

The assertion of the Plaintiff that the disputed farmland was gifted to her grandfather who also gifted same to her must be proved. When the PW1 who claimed to be present when the aseda for the gift was made, was asked under cross examination who was a neutral person at that ceremony, she answered in the negative. This is what transpired on 20<sup>th</sup> May, 2019:

Q: How did he give the land to his children?

A: He announced to all the members of his family that he was gifting the land to his children.

Q: Which people were present when he was gifting the land to his children?

A: Amprofi (his nephew) who succeeded, Yaa Beyeseh, all his children including myself were all there.

Q: Who was present at the event and was a neutral person?

A: There was none.

The above line of cross examination and answer given by the witness suggest that there was no neutral person when the supposed aseda was offered, which is contrary to the law.

The Defendants in further denial of the assertions of the Plaintiff, tendered in evidence Exhibits 1 and 2 which are record of proceedings and judgment in the case titled ABENA BREMPOMA VRS.ADJOA KYIA and a pledge dated 19<sup>th</sup> April 1947 respectively.

According to the Defendants the disputed farmland initially belonged to their great grandmother Adwoa Kyea whose daughter was Adwoa Kaah their grandmother. Adwoa Kyea married Kwabena Korkoreh and they cultivated the forest land for a while. After the death of Kwabena Korkoreh a dispute arose between Adwoa Kyea over the forest land and so after the dispute, she shared the land among her children which their grandmother Adwoa Kaah was among the said children and her portion is what is in dispute now.

It is evidence from the Exhibit 1 that the said Adjoa Kyia (Adwoa Kyea) is the Defendants great grandmother and judgment was delivered in her favour – per proceedings dated 17<sup>th</sup> April, 1956 titled Findings and I will quote from paragraphs 745 to 755 :

*“745 In examining these two farms by this Court, it appears that the whole of the Akwaduro farm in dispute is not for the Plaintiff. The Defendant gets part of this cocoa farm by a demarcated boundary marked with empty bottles fixed on the ground”*

*“750 At Kunkunso Nkwantia too, it appears the whole cocoa farm is not for the Plaintiff, because a larger part of this farm is for the Defendant and the boundary between them is from a hill running down to a pineapple, thence to a cocoa tree and thence to Kunkunso motor road. Plaintiff was wrong then to swear oath that the two cocoa farms are for her” and*

*“755 Judgment there in favour of Defendant with costs to be taxed”.*

Exhibit 2 is a pledge of 5 cocoa farms which according to the DW1 was used to secure financial assistance, of which the disputed farmland was part.

These are two important documents and the Plaintiff did not even cross examine the witness who tendered them in evidence. The Apex Court has through ANSAH JSC stated the legal effect of failure to object to evidence in the case of DANIELLI CONSTRUCTION LTD VRS. MABEY & JOHNSON LTD [2007-2008] 1 SCGLR 60 @ 65

**“The Plaintiff Company did not cross examine the witness of the Defendant Company in the witness box when he gave that evidence.**

**The Plaintiff Company did not also tender any evidence to challenge the veracity of the evidence in Exhibit 2 and the inference was that it admitted the import of the evidence”**

This means that the Plaintiff has admitted what is contained in those exhibits. Also the Plaintiff’s grandfather (who was alleged by the PW1 to have gifted the disputed farmland to the Plaintiff’s father), Opanin Kwabena Attah’s name is on Exhibit 2 as a witness. Granted without admitting that the disputed farmland initially belonged to him, why would he allow that land to be used as a pledge and also be a witness to that agreement.

The Plaintiff and her witness also not denied the content of Exhibits 1 and 2 and the law is settled that where there is oral evidence and written document in respect of a transaction, the Court will consider both evidence and lean favourably towards the documentary. The case of **DUAH VRS. YORKWA [1993-1994] 1 GLR 217 @ holding 5** as follows:

**“Whenever there was a written document and oral evidence in respect of a transaction, the Court would consider both the oral and the documentary evidence and often lean favourably towards the documentary evidence, especially where the documentary evidence was found to be authentic and the oral evidence conflicting. In the instant case, although both parties relied on exhibit 1 whose authenticity was not in doubt, the oral evidence relied on by the Respondent to prove her claim that the transaction was a pledge, was conflicting and inconsistent in material respects. Accordingly, the Court would lean favourably towards the documentary evidence in**

**exhibit 1 which supported the case of the appellant that the transaction was a sale and not a pledge”**

The next issue I would like to have a look at is whether the Plaintiff has been in peaceful possession of the disputed farmland.

Possession may be actual or constructive. It is actual when the Plaintiff is in physical possession of the subject matter and it is constructive when the Plaintiff has right to possession or is exercising right of ownership over the land.

The evidence of the Plaintiff is that her father was in possession of the disputed farmland until same was gifted to her and her siblings and after it was gifted to them, they had been in possession until the Defendants came to harvest the cocoa when it started bearing fruit.

According to the DW2 who is the linguist to the Sanahene and he was present when the Defendants grandmother reported the Plaintiff's father at the chief's palace and the 2<sup>nd</sup> Defendant went to the disputed farm after the demise of the Plaintiff's father and even harvested ripped cocoa

All these are indications that the occupation of the farmland by the Plaintiff's late father and the Plaintiff herself were being challenged and for that matter the Plaintiff has not been in peaceful possession of the disputed land.

The Plaintiff listed her boundary owners as Afua Akyea, Adwoa Neenko, Nana Yaw Brefie, Nana Yaw Adjei and Op. Kwadwo Asase yet she failed to call any of them to testify for her as she is seeking for declaration of title.

I therefore find and hold that the disputed farmland did not belong to the Plaintiff's late father.

The case of the Plaintiff is that disputed farmland was gifted to her and her maternal siblings by their father before he died.

Generally, a gift could be made of anything to one provided the subject matter is a self-acquired property of the donor.

The Black's Law dictionary defines gift as "the voluntary transfer of property to another without compensation".

Gift is also explained by Kwamena Bentsi-Enchill in his book titled **GHANA LAND LAW – An Exposition, Critique and Analysis** at page 360 as follows:

**"a gift is like a sale in which the vendor expects no price to be paid and asks for none. That is to say it is a voluntary transfer of title to another for no consideration. As in a sale, the donor must be the owner of the thing given, have the competence to transfer it and fully intend so to do, and purport to do so. If these conditions are satisfied, but the intended donee refuses to accept the proffered gift, then there is no gift. For a donee willing to accept the gift is needed for the making a gift; and an acceptance of some sort by the donee is necessary to complete the gift".**

From the above explanation the property to be given out must be self-acquired property of the donor, he must have capacity to give out the property (he must be of sound mind and must not be a minor) and the donee must accept the gift and under our customary law the donee accepts the gift by providing 'aseda' to the donor.

For a customary gift to be valid certain elements/requirements must be existing and these are provided for in a number of decided cases.

The Supreme Court in the case of YOGUO & ANOR. VRS. AGYEKUM & ORS. [1966] GLR 482 gave the requirements of a valid customary gift as follows:

**“a valid gift, under customary law, is an unequivocal transfer of ownership by the donor to the donee, made with the widest publicity which the circumstances of the case may permit. For purpose of the required publicity, the gift is made in the presence of independent witnesses, some of whom should be members of the family of the donor who would have succeeded to the property if the donor had died intestate and, also, in the presence of members of the family of the donee who also would succeed to the property upon the death of the donee on intestacy. The gift is acknowledged by the donee by the presentation of drinks or other articles to the donor, the drink or articles are handed to one of the witnesses – preferably a member of the donee’s family, who in turn delivers it to one of the witnesses attending on behalf of the donor; libation is then poured declaring the transfer and the witnesses share a portion of the drink or other articles. Another form of publicity is exclusive possession and the exercise of overt of ownership by the donee after the ceremony....”**

See also ABDUL RAHMAN VRS BABA LADI; CIVIL APPEAL NO. J4/36/2013, 29<sup>TH</sup> JULY, 2013 where it was held as follows:

**“on proof of gift inter vivos, counsel for the appellant cited three relevant decisions of this Court. ‘These are Mahama Hausa v. Baako Hausa [1972] 2 GLR 469; Asare vrs. Kumoji [2000] SCGLR 298; Akumsah vrs. Botchway & Jei River Farm Ltd. [2011] 1 SCGLR 288.**

**The most important element of a customary gift that runs through these authorities and several others is that the gift must be offered and accepted and must be witnessed by somebody else other than the donor and donee. ‘Thus when the fact that a gift has been made is challenged, it will not be sufficient to state barely that a gift was made; you have to go on to show the occasion, if any, on which the gift was made; the date; the time, if possible; the venue and most importantly, in whose presence it was made’.**

The only evidence led by the Plaintiff in respect of this alleged gift, is when she testified on 16<sup>th</sup> January, 2019 is “my father gifted the land to his children before he died” and this claim is not even borne out of the Plaintiff’s writ. Her witness also under cross examination admitted that there was no neutral person from her father’s family who was present when the supposed aseda was offered.

Having held that the disputed farmland did not belong to the Plaintiff’s late father, then same could not have been given to the Plaintiff herein and her maternal siblings and for that matter I need not go any further on the issue of the gift.

On the totality of the evidence adduced by the parties and their witnesses I find the evidence of the Defendants being corroborated by their witnesses and for that matter I hold that the evidence of the Defendants is more probable than its none existence

It is for this reason that I will dismiss the Plaintiff’s claim endorsed on her writ of summons and same is accordingly dismissed.



I award cost of One Thousand Hundred Ghana Cedis (GHS1,000.00) against the Plaintiff and in favour of the Defendants.

SGD.  
VICTORIA VERA AKONU  
DISTRICT MAGISTRATE